THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.5650 of 1994

Date: 16.02.2006

Between:

M. Rayanna, S/o Thomaraiah, aged: 63 years, Brodipet, Guntur.

…Petitioner

and

Government of Andhra Pradesh rep.,by its Secretary, Education Department, Hyderabad. And three others.

…Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.5650 of 1994

JUDGMENT:

Questioning the memo of the 1st respondent dated 27.8.1992, to the extent the claim of the petitioner for payment of salary for the period between 6.7.1973 and 21.1.1983, was rejected, the present writ petition is filed.

Facts in brief are that the petitioner while working as Head Master of the 4th respondent school was transferred by order dated 5.7.1973, to the 5th respondent school, despite the fact that he was working in the 4th respondent school, an aided institution, ever since 1956. On receipt of the said orders of transfer on 6.7.1973, the petitioner preferred an appeal to the 2nd respondent. The petitioner also filed O.S.483/73 before the Court of District Munsif, Sattenapalli and sought interim injunction in I.A.1247/73. Since the I.A. was dismissed, by order dated 30.1.1974, the petitioner went to the 5th respondent school and reported for duty whereat he was not permitted to join duty, despite the fact that the post of Head Master was vacant. The petitioner submitted a representation on 17.7.1993 and the 2nd respondent issued instructions, vide proceedings dated 18.7.1973, to the 3rd respondent to take immediate action and submit a detailed report. The 3rd respondent directed the 4th respondent, vide proceedings dated 12.1.1975, to permit the petitioner to continue in the 4th respondent school. The petitioner was, however, not permitted to join duty either in the 4th respondent or in the 5th respondent school. Petitioner's salary was not paid for the months of January and February, 1975 and when his salary for the month of March, 1975 was also not paid, the petitioner submitted a representation to respondents 2 and 3. The 3rd respondent issued proceedings dated 19.3.1976 stating that the petitioner's salary would be released after finalization of the writ petition filed by the management against the proceedings 28.7.1975, in the appeal filed by the petitioner, directing that the petitioner be taken back on duty.

W.P.4834/75, filed by the fourth respondent, against the order of the 2nd respondent

dated 28.7.1975, was dismissed by order dated 2.7.1978. Consequent thereto, the 2nd respondent again issued proceedings dated 28.9.1978 directing the 4th respondent to take the petitioner back on duty. Aggrieved thereby, the 4th respondent again filed W.P.4281/78 which came to be dismissed by order dated 13.5.1978. Aggrieved by the dismissal of the earlier writ petition in W.P.4834/75 dated 2.7.1978, the 4th respondent filed Civil Appeal No.35/79 before the Supreme Court challenging certain provisions of the A.P. Recognized Private Educational Institutions Control Act 1975 and the Civil Appeal was disposed of by the Supreme Court, by judgment dated 4.2.1980, holding certain provisions of the said Act to be illegal. The matter was remanded back to this Court to decide W.P.4834/75 on merits. On remand, the writ petition was disposed of directing the authorities to dispose of the appeal preferred by the petitioner under the A.P. Education Rules and the impugned order dated 28.7.1975, which was issued pending final orders, was set aside.

The 1st respondent issued Memo dated 28.8.1982 directing the 2nd respondent to absorb the petitioner in one of the newly sanctioned or already sanctioned vacant posts under any management in Guntur District. The 2nd respondent issued consequential proceedings dated 3.9.1982 forwarding the directions of the 1st respondent to the 3rd respondent. The 3rd respondent, on 3.11.1982, directed the District Development Officer, Z.P.P. Guntur to consider the case of the petitioner for absorption in any one of the posts available under his jurisdiction. The District Development Officer, vide proceedings dated 30.12.1982 appointed the petitioner as a Secondary Grade Teacher, in the minimum scale of pay, in the Panchayat Samithi School, Pedakurapadu.

The petitioner submitted a representation to the 2nd respondent to treat the period between 6.7.1973 and 21.1.1983 as on duty. The 2nd respondent issued proceedings dated 16.1.1983 stating that it would not be feasible. Aggrieved thereby, the petitioner preferred an appeal to the 1st respondent. The Government called for remarks pursuant to which, the District Development Officer submitted his remarks in his proceedings dated 16.1.1989. The 2nd respondent submitted remarks in proceedings dated 24.5.1989 wherein he opined that the petitioner was not at fault and it was only respondents 4 and 5 who had deliberately violated the orders

issued by the department resulting in the petitioner being kept out of employment for a decade. The petitioner was issued memo dated 27.8.1992 condoning the gap between 6.7.1973 and 21.1.1983 for the limited purpose of increments and notional pay fixation and pension without right to claim salary for the said period. The 2nd respondent issued consequential proceedings dated 18.9.1992 to the same effect and the 3rd respondent issued proceedings dated 4.3.1983 asking the Accountant General to release the pension of the petitioner taking into consideration the gap in service also.

The Petitioner would contend that respondent 1 to 3, despite holding respondent 4 and 5 responsible for keeping him out of employment for a decade, failed to exercise their powers of control over respondents 4 and 5 resulting in the petitioner losing his status as well as salary. He would contend that since respondents 1 to 3 had the power to stop grant in aid or to cancel recognition to respondents 4 and 5 institutions, they should not have taken a lenient view of respondents 4 and 5 deliberately flouting the orders issued by respondents 2 and 3 time and again. According to the petitioner, he cannot be penalized for the omission on the part of the respondents 1 to 3 in exercising their statutory power against respondents 4 and 5. Petitioner would contend that the respondents are jointly and severally liable to pay salary for the period between 6.7.1973 and 21.1.1983, and that they are responsible for the monetary loss which he sustained on his being absorbed as a Secondary Grade Teacher in the minimum scale of pay. The petitioner seeks consequential directions to the respondents to pay him salary for the period from 6.7.1973 to 21.1.1983 and to release all other monetary benefits as if he had continued as a Head Master in the 4th respondent school without any break, after deducting such amounts which had already been paid, including pension, gratuity etc, with interest at the rate of 18% per annum with effect from the due date.

A counter affidavit is filed on behalf of respondents 1 to 3 wherein it is stated that the petitioner was transferred, vide proceedings dated 5.7.1973, without prior permission being obtained from the department, the management of respondents 4 and 5 had failed to follow the instructions of the government in proceedings dated 8.11.1956, and despite repeated instructions from the department, from time to time, the management had failed to implement departmental orders. It is stated that eventually the petitioner was appointed as a Secondary Grade teacher in the P.S. Elementary School, Pedakurapadu in the scale of pay of a secondary grade teacher,

he was out of employment during the period from 6.7.1973 and 21.1.1983, this gap period had not been condoned and he was not paid salary for the said period. It is stated that condoning the gap, the petitioner has been sanctioned periodical increments and his pay was fixed notionally and entries to that effect were entered in his service register. However, salaries were not paid in the absence of any orders being passed thereon by the government. It is also stated that pension proposals were sent to the Accountant General, vide proceedings dated 4.3.1993, treating the gap period as on duty and revised pension was also admitted by the Accountant General. Respondents would contend that the claim of the petitioner was belated and the petitioner was making such a request after a gap of more than a decade. It is also stated that the department is not bound to pay salary from 6.7.1973 to 21.1.1983 and that the 4th and 5th respondent managements were responsible for creating such a situation.

Sri Nooty Rama Mohan Rao, learned counsel for the petitioner, in his usual fair and forthright manner, would agree that there is no statutory provision under which the petitioner could base his claim for payment of salary by the government, for the period from 6.7.1973 to 21.1.1983. Learned counsel would however contend that the respondent authorities had the power to take stringent action against the 4th and 5th respondents, including stoppage of grant in aid and to take action against the management and, if necessary, appoint a special officer, under Section 24(3) of the A.P. Education Act. Learned counsel would submit that it is accepted by the official respondents that the petitioner was not to blame and that the monetary loss sustained by him was solely on account of the recalcitrant attitude of respondent Nos.4 and 5 in not taking the petitioner back to duty. According to the learned counsel, respondent No.1 ought to be directed to make payment of the amounts due to the petitioner, leaving it open for them to recover it from respondents 4 and 5, in accordance with law.

The provisions of the A.P. Education Act are regulatory and several provisions thereunder regulate the manner in which schools and other institutions in the State, are to function. This does not, however, result in the government becoming the employer of teachers in private aided institutions. It is still the management of the school which is their employer. If the petitioner has been wrongly prevented from discharging his duties, his remedy is to take necessary

action against his employer, the 4th and 5th respondents, and not the government. Provision of grant in aid is a form of financial assistance by the State, to the institution. The provision of financial assistance neither results in the government becoming the employer of teachers in private aided institutions nor does it result in the government taking upon itself the responsibility of ensuring payment of salaries. While the contention of Sri Nooty Rama Mohan Rao, that respondents 1 to 3 should have exercised their powers under the A.P. Education Act and taken action against respondents 4 and 5 for their flagrant violation of the directions of respondents 1 to 3, is not without merit, it does not follow therefrom that since they did not take action against respondents 4 and 5, the government is liable to pay salary to the petitioner for the period from 6.7.1973 to 21.1.1983. The government cannot be mulcted with financial liability for the illegal acts of respondents 4 and 5 in keeping the petitioner out of employment. The claim the petitioner as against respondents 1 to 3, for payment of salary, is therefore rejected.

In so far as the petitioner's claim against respondents 4 and 5 is concerned, it is a pure and simple money claim, for which the remedy, if any, is only by way of a suit before a civil court of competent jurisdiction. I see no reason to exercise the jurisdiction of this Court, under Article 226 of the Constitution of India, and adjudicate these money claims which relate to a period three decades ago.

The writ petition fails and is accordingly dismissed. However, in the circumstances, without costs.

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